

SAMPLE

**AGREEMENT FOR ENGINEERING SERVICES
BURBANK CHANNEL BIKEWAY PROJECT
PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENTATION (PA&ED) AND
PLANS, SPECIFICATIONS AND ESTIMATES (PS&E)**

DATE:

PARTIES: "OWNER"

THE CITY OF BURBANK, a municipal corporation

Designated Official: Name: Joy Forbes
 Title: Community Development Director
 Telephone: (818) 238-5176

Project Manager and
Contract Administrator: Name: Ross Young
 Title: Real Estate and Project Manager
 Telephone: (818) 238-5210

Mailing Address: 275 E. Olive Ave.
 P.O. Box 6459
 Burbank, CA 91510-6459

THE "ENGINEER"

Representative: Name: _____
 Title: _____
 Telephone: _____

Mailing Address: _____

TERM: **Commencement Date:** _____

Completion Date: _____

COST OF SERVICES: \$ _____

THIS AGREEMENT MUST BE FIRST EXECUTED BY THE ENGINEER OR ITS REPRESENTATIVE AND APPROVED AS TO FORM BY THE CITY ATTORNEY BEFORE THE AGREEMENT MAY BE EXECUTED ON BEHALF OF THE CITY OF BURBANK.

AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT FOR ENGINEERING SERVICES ("Agreement") is made and effective this ____ day of _____, by and between the CITY OF BURBANK, a municipal corporation ("City" or "Owner"), and, ("Engineer"). Hereinafter, the Owner and the Engineer may be referred to collectively as "Parties." This Agreement is entered into with respect to the following facts:

A. Owner issued a Request for Proposal ("RFP") to obtain engineering services for the Project known as the **Burbank Channel Bikeway Project** (the "Project"). The Project limits are in the City of Burbank, California along the Burbank Western Channel between the Downtown Burbank Metrolink Station and Alameda Avenue.

B. Owner met and discussed all project requirements with the Engineer to identify preliminary engineering, final design efforts, related right-of-way, utility relocation, construction administration, and other necessary services to complete the required services and tasks for the Project.

C. The Project is currently and generally comprised of: coordinate Project Approval and Environmental Documentation (PA&ED); prepare Plans, Specifications and Engineer's Estimates (PS&E); coordinate with regulatory agencies; coordinate with City staff in the preparation of the PS&E package and bid support services; and provide Construction Administration (CA) services for the Project. The result of the PA&ED and PS&E submittal shall result in the City receiving E-76 approval for right-of-way acquisition and for construction and permits for construction.

D. Engineer submitted its Proposal Documents to Owner on _____ ("Proposal Documents").

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, Owner and Engineer mutually agree as follows:

ARTICLE 1 ENGINEER'S GENERAL RESPONSIBILITIES

1.1 Services and Phased Authorizations.

Engineer agrees to perform during the term of this Agreement, each and every service enumerated herein and in the "Scope of Services" document attached to this Agreement as **Exhibit A** ("Services"). The initiation of each phase of Services by the Engineer will commence upon receipt of a written Notice-to-Proceed from the Owner's Representative designated in **Exhibit B**, authorizing Engineer to proceed to the extent of such written authorization.

1.2 Owner's Separate Consultants.

Owner, at its sole option, may retain other consultants in connection with various phases of design and construction for this Project ("Owner's Separate Consultants"). Owner's Separate Consultants may be designated in **Exhibit B** or, in writing, after execution of this Agreement. Engineer acknowledges and agrees that it will coordinate

its Services with Owner's Separate Consultants upon written notice by Owner to Engineer of their designation including, but not limited to, participating in meetings with the Owner's Separate Consultants without additional charge to Owner. Owner's retention and use of Separate Consultants shall not in any way diminish or supersede Engineer's responsibilities under this Agreement. The Engineer, however, will not be responsible for any errors and omissions contained in the Owner's separate Consultants instruments of service.

1.3 Engineer's Personnel.

1.3.1 Engineer's Project Representative. The Engineer's Project Representative, as approved by Owner, is designated in **Exhibit B**. Engineer's Representative shall: (1) be actively involved throughout all phases of engineering and design, and construction of the Project; (2) maintain design oversight of the Project at all times; (3) have full authority to represent and act on behalf of the Engineer for all purposes under this Agreement; (4) supervise and direct the Services using their professional skill and attention; (5) be responsible for the means, methods, techniques, sequences, and procedures used for the Services of the Engineer and its Consultants; (6) coordinate all portions of the Services; and (7) act as the principal contact with the Owner and all contractors, consultants, engineers, and inspectors on the Project. Notwithstanding the foregoing, Engineer's project representative shall not be personally liable for, nor be a guarantor of, the performance of Engineer's obligations hereunder.

1.3.2 Engineer's Key Personnel. In addition to its designated Representative, Engineer represents to Owner that certain additional Key Personnel, approved by Owner and designated in **Exhibit B** will perform Services required by this Agreement. Owner may at any time elect to add job categories to the Engineer's Key Personnel list.

1.3.3 Engineer's Consultants. Engineer has the option, unless Owner reasonably objects in writing, to employ, at its expense, consultants qualified and licensed to render Services in connection with the Project and to delegate duties to them without relieving Engineer from responsibility under this Agreement. Engineer shall utilize the consultants accepted by Owner and designated in **Exhibit B** ("Consultants") to perform Services. Whenever it is necessary for the Engineer to employ additional Consultants or substitute designated Consultants, that action shall require the prior written acceptance of Owner. Owner will not unreasonably withhold acceptance. The Engineer shall enter into written agreements with the Consultants that require each Consultant to acknowledge and agree that all Services must be performed in accordance with Engineer's obligations under this Agreement and to provide a breakdown and back-up for all Services and costs. Owner shall have the right, but not the obligation, to review and accept the form and substance of Engineer's contracts with Consultants. All primary Consultants (Mechanical, Electrical, Plumbing, Structural, Civil, and others) hired by Engineer shall meet all of the insurance requirements set forth in this Agreement and their contracts shall not contain any waiver or limitation of liability unless approved by Owner in writing. Each Consultant contract will be assigned if necessary by the Engineer to Owner, provided that the assignment is effective only after termination of this Agreement by the Owner and only for those Consultant contracts that the Owner accepts by notifying the Consultant in writing. ***A copy of each written contract between the Engineer and its Consultants shall be provided to the City***

prior to the commencement of Consultants services to be provided to the Engineer. Pursuant to California Department of Transportation (Caltrans) Local Assistance Procedures Manual (LAPM) Chapter 10, subcontracts exceeding \$25,000 must contain all required provisions of the prime contract.

1.3.4 Changes in Engineer's Designated Representative, Key Personnel and Consultants. The Services provided by the Engineer are deemed to be personal services. Engineer understands and acknowledges that its selection by Owner was, in part, based on the Engineer's Representative, Key Personnel, and Consultants identified in **Exhibit B**. The Engineer shall not make changes to its Representative, Key Personnel or Consultants or reduce their responsibilities for this Project without the prior written approval of the Owner. The Engineer shall request and justify the need for the substitution and obtain approval from the Owner prior to use of a different subconsultant on the contract. The proposed replacement must be as qualified as the original, and at the same or lower cost. Should circumstances beyond the control of the Engineer result in changes to any person or entity on this team, the Engineer shall submit the credentials of the Engineer's proposed replacement for the Owner's approval, which approval shall not be unreasonably withheld. If Owner determines, in its sole but reasonable discretion, that the performance of any person or entity employed by Engineer is unsatisfactory, then at the written request of Owner, Engineer shall remove, reassign or replace such individual or entity and such individual or entity shall not be reemployed on the Project without the prior written approval of Owner.

1.3.5 Qualifications and Licenses. All design, professional, and engineering Services furnished by or on behalf of the Engineer shall be performed by persons qualified to perform the Services assigned to them and shall be under the responsible charge of the Engineer licensed to practice their respective trades or professions, where required by law, and who shall assume professional responsibility for all programming, design, calculations, and related engineering documents, hereinafter defined, prepared or furnished by them. Engineer's Representative, Key Personnel, and Consultants shall be experienced in projects of similar nature and complexity to the subject Project and shall be approved by Owner prior to their assignment to the Project. Engineer shall provide current information on the professional background of its Representative, Key Personnel, and Consultants upon request by Owner.

1.3.6 Suitability of Work and Cooperation.

1.3.6.1 Engineer shall furnish Services in accordance with the agreed upon Schedule, hereinafter defined, and ensure all Services are completed in accordance with sound professional principles by licensed professionals where applicable. Engineer shall, upon request of Owner, provide all calculations, data, charts, and other information of any type whatsoever which support the Services performed pursuant to this Agreement. Engineer may not assert as a basis for refusing to provide such information that it is proprietary.

1.3.6.2 Engineer is aware and agrees that Owner has the right to submit the Project Documents, hereinafter defined, of Engineer and its Consultants to independent reviewers. Engineer agrees to fully cooperate with such reviewers if Owner determines that such peer reviews are appropriate. Engineer's obligation to cooperate shall include the obligation to respond in an objective professional manner to

requests for information, and if expressly requested by the Owner to enter into a dialogue with the reviewer regarding the reviewer's comments.

1.3.6.3 Engineer realizes that Owner shall have ultimate control over decisions on matters relating to aesthetic effect and any other matters affecting the cost and timing of the Project, as well as matters related to planning for end users of the completed Project. Engineer agrees to work with Owner to implement all of Owner's decisions on these matters. The Engineer will coordinate its work and be responsive to Owner's decisions on matters relating to aesthetic effect, cost, and timing of the Project. In the event agreement cannot be reached between Owner and Engineer, Owner and Engineer agree to immediately proceed to resolve any disagreement pursuant to Article 14.

ARTICLE 2 TIME FOR PERFORMANCE

2.1 Commencement Date and Completion Date.

Time is of the essence for performance of the Services required by this Agreement. Engineer's Basic Services will commence upon Owner's issuance of an initial Notice-to-Proceed ("Commencement Date"). The schedule for completion of PA&ED/PS&E and to provide bid support services for the Project are cited in Exhibit A. The Completion Date for all tasks under this phase shall not be exceeded without the prior written approval of Owner. The Owner will agree to review all submissions in a timely fashion. If the Owner takes longer than fourteen (14) calendar days to review a submission, time for performance of services by the Engineer will be extended on a day-by-day basis for all days in excess of the fourteen (14) calendar day review period. The Completion Date will be adjusted as a result of the additional days taken by the Owner to review the submission.

2.2 Schedule.

Within ten (10) calendar days after the Owner issues the initial Notice-to-Proceed, the Engineer and Owner shall collaboratively prepare a completion and approval schedule of the performance of Engineer's Services, those of its Consultants and required City approvals for each phase of Services ("Schedule"). This Schedule shall indicate the date by which the Engineer agrees to complete the performance of Basic Services, date of (or, where applicable, periods of elapsed time allowed for) Owner approvals and anticipated approval periods required for public authorities having jurisdiction over the Project date for Completion of related Engineering Documents. The Schedule shall be consistent with the Contract Time limits set forth herein. Once accepted by Owner, the Schedule will become part of this Agreement and the Engineer will be bound by that Schedule and will not deviate from it without prior written authorization by the Owner. Whether or not deviations from the Schedule have been authorized by the Owner, the Engineer shall update the Schedule as necessary to reflect Owner approved changes or unavoidable deviations, indicating probable impacts of those deviations on the performance of the Engineer's Services and the Project. Nothing in this Agreement shall be construed as a waiver of Owner's right to obtain compliance by the Engineer with the accepted Schedule. Engineer will not be responsible for any delays caused by Owner or those acting under Owner's control. To the extent that such delays are caused by Owner or those acting under Owner's control,

Owner recognizes that the Schedule of the Engineer will be extended as a result of such Owner controlled delays.

2.3 Excusable Delay.

Any delays in Engineer's Services caused by the following shall be added to the time for completion of any obligations of Engineer: (1) the actions of Owner or its employees; (2) the actions of those in direct contractual relationship with Owner; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Engineer; and (5) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of Engineer (hereinafter "Excusable Delay"). Neither the Owner nor the Engineer shall be liable for costs or damages, liquidated or otherwise, to the other on account of such Excusable Delays. The Engineer shall, within twenty-one (21) calendar days of the beginning of any Excusable Delay (unless Owner grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement), notify the Owner in writing of the delay. Owner will then ascertain the facts and the extent of the delay, and grant an extension of Date for Basic Services when, in its sole judgment, the circumstances justify such an extension. Extensions of time shall apply only to that portion of Basic Services affected by the Excusable Delay and shall not apply to other portions of the Services not so affected. The sole remedy of Engineer for extensions of time shall be an extension of the Completion Date, or other interim schedule deadline at no cost to the Owner. If Additional Services are required as a result of an Excusable Delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement.

2.4 Extraordinary Measures.

In the event Owner determines that the performance of the Services has not progressed or reached the level of completion required by the accepted Schedule and does not constitute an Excusable Delay, the Owner shall have the right to order the Engineer to implement corrective measures within ten (10) calendar days of Owner's written demand, to expedite the progress of Services, including, without limitation, (1) working overtime, (2) supplying additional personnel or Consultants for the Work or other similar measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary Measures shall continue until the progress of the Services complies with the stage of completion required by the Schedule. The Engineer shall not be entitled to an adjustment in compensation in connection with the Extraordinary Measures required by the Owner pursuant to this Section. The Owner may exercise the rights furnished the Owner pursuant to this Section as frequently as the Owner deems necessary to ensure that the Engineer's performance of Services will comply with the Schedule. If the Engineer fails to implement or commence Extraordinary Measures within ten (10) calendar days of Owner's written demand, Owner shall have the right to terminate the Engineer for cause.

ARTICLE 3 SCOPE OF ENGINEER'S BASIC SERVICES

3.1 Enumeration of Services.

The Engineer's Scope of Basic Services is enumerated in **Exhibit A**, Scope of Services.

3.2 Standard of Care.

Engineer hereby represents that it has the professional experience and skill to perform the Services required to be performed hereunder; that it shall comply with applicable federal, state and local laws, including but not limited to all professional registration (both corporate and individual) for all required basic disciplines; that it shall perform the Services in accordance with generally accepted professional standards and in an expeditious and economical manner; that it has sufficient capital assets and is adequately financed to meet all financial obligations it may be required to incur hereunder and will, if requested by Owner City, submit documentation of such assets and finances.

3.2.1 If, at any time during the performance of its Services or during the maximum period permitted by applicable law after completion of same, it is discovered that Engineer or any of its officers, directors, agents, subcontractors, employees, or Consultants has committed any negligent act, error or omission, which has caused or will otherwise cause unnecessary additional expense to Owner, then Engineer shall, at Owner's request, promptly make all necessary corrections.

3.2.2 Owner recognizes that no set of plans and/or specifications is perfect, that Change Orders can be anticipated, and agrees to act reasonably in its review of any Change Orders submitted on the Work. Owner shall monitor the Project for any errors and omissions that are reasonably attributable to Engineer and/or its Consultants. In the event the Engineer and/or any of its Consultants fails to perform its services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances and the accumulative costs proximately caused by the resulting errors and/or omissions exceed an amount that Owner reasonably believes is unjustified, then Owner may, at its reasonable discretion, file a claim against the Engineer for reimbursement of such costs.

3.2.3 For omissions, Engineer will be liable for difference in cost over and above the cost of the work if originally performed. Owner recognizes that it is only the "delta cost" that Engineer may be responsible for, i.e., the difference in cost between the original work if properly performed, and, the work ultimately performed as a result of any omission. For errors, Engineer will be liable for the cost of the work necessary to correct the error. Correction of errors and omissions shall include, but not be limited to, additional architectural and engineering services, design documentation, travel, demolition, removal, relocation, manufacture, fabrication, construction, testing, and installation proximately caused by said error and omissions.

3.3 Laws and Regulations.

3.3.1 Drawings and Specifications. Engineer shall cause all graphic and pictorial documents showing the design, location, and dimension of the work ("Drawings") and written requirements for materials, equipment, systems, standards, and workmanship for construction of the work ("Specifications") to conform to applicable requirements of federal, state and local laws, rules and regulations, in effect as of the time the Drawings and Specifications are prepared or revised during the latest phase of the Services described herein. Engineer has an obligation to monitor changes to applicable laws, rules, and regulations and to promptly advise Owner of any changes that potentially may impact the Project. Any significant revisions made necessary by legislative enactment of changes in such laws, rules and regulations after this time shall be compensated as Additional Services. Engineer shall cause the necessary copies of such Drawings and Specifications to be filed with any governmental bodies with approval jurisdiction over the Project.

3.3.2 Americans with Disabilities Act. Engineer will use its professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act of 1990 ("ADA") and as contained in the California Code of Regulations. The Americans with Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility for first occupancy later than January 26, 1993, that does not meet the accessibility and usability requirements of the ADA except where an entity can demonstrate that it is structurally impractical to meet such requirements. Owner acknowledges that the requirements of the ADA will be subject to various and possibly contradictory interpretations. Engineer, therefore, will use their reasonable professional efforts to interpret applicable ADA requirements and other federal, state and local laws rules, codes, ordinances and regulations as they apply to the project. Engineer shall inform Owner of its interpretations of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law. Unless Engineer brings such inconsistencies and conflicting interpretations to the attention of the Owner and requests Owner's direction on how to proceed, the Engineer's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Engineer, and the Engineer shall correct all Drawings, Specifications and other documents prepared for the Project at no additional cost if Engineer's interpretations are shown to be incorrect.

3.3.3 Review of City's General Conditions. Engineer shall be responsible for reviewing the City's standard construction agreement for this type of project and shall not duplicate in any way, or submit work product that is in conflict with, the General Conditions of such agreement. Any submitted work product that either duplicates or is in conflict with the General Conditions of City's standard construction agreement for this type of project shall be rejected and corrected at no cost to the City.

ARTICLE 4 ADDITIONAL SERVICES

4.1 Definition.

The Owner, without invalidating this Agreement, may make changes, additions, and deletions in the Scope of Services or otherwise amend this Agreement. All changes in the Services shall be performed under applicable provisions of the Agreement. Except in an emergency endangering life or property, no Additional Services or change in scope of Services shall be made except pursuant to a written Amendment to this Agreement and no claim for additional compensation or an extension of the Completion Date shall be valid unless so ordered by Owner. At Owner's request, Engineer may be asked to perform services not otherwise included in this Agreement, not included within the Basic Services enumerated herein and in **Exhibit A**, and/or not customarily furnished in accordance with generally accepted architectural practice. As used herein, "Additional Services" shall mean: (1) any services determined by Owner to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary for the Engineer to perform at the execution of this Agreement; or (2) any services listed as Additional Services or Excluded Services in **Exhibit A** attached hereto. Engineer shall not perform, nor be compensated for, Additional Services without prior written authorization from Owner and without an agreement between the Owner and Engineer as to the compensation to be paid for such Additional Services. Owner shall pay Engineer for completion of any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Engineer. Such Additional Services shall not include any redesign or revisions to Drawings, Specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Engineer was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above.

4.2 Owner's Authorization of Additional Services.

4.2.1 Minor changes in the services that involve no extra cost, may be approved, authorized, and ordered by the Owner's Representative designated in **Exhibit B**. No other change shall be made nor Additional Services performed except by Amendment to the Agreement and: (1) with prior written approval from the Owner; and (2) the change does not (a) exceed 10% of the original Cost of Services or \$50,000, whichever is less; or (b) cause the total compensation to Engineer, including all Additional Services and Reimbursable Expenses, to exceed the budgetary appropriation made by resolution of the Owner's City Council. If the Additional Services exceed any of the preceding amounts, the Owner's City Council must approve the Amendment.

4.2.2 Owner may issue a request, in writing, to the Engineer, describing a proposed addition, deletion or change to the Service and requesting the Engineer to submit a pricing proposal, in a format acceptable to Owner, within fifteen (15) calendar days after Owner's issuance of the request, or such time as may be reasonably necessary to ensure the extent of the scope change is both clear and can be reasonably priced and the time extension, if any, be reasonably identified. The Engineer's pricing proposal shall include an analysis of impacts to cost and time, if any, to perform the addition, deletion or change in Services, as applicable, including the

effects and impacts, if any, on unchanged Services. The Engineer's pricing proposal shall provide sufficient detail and necessary documentation support in a format reasonably acceptable to the Owner for Owner's review and approval. If Engineer fails to submit a price proposal within such time period, it shall be reasonably presumed that the change described will not result in a change to Engineer's compensation or Completion Date and the change shall be performed by Engineer without cost adjustment. Owner's written request for a pricing proposal does not authorize the Engineer to commence performance of the described services. If the Parties reach agreement on the cost of pricing such change(s), an Amendment to the Agreement will be issued.

4.3 Engineer Initiated Request for Additional Services.

4.3.1 If the Engineer alleges that instructions issued after the effective date of the Agreement will result in an increase to the compensation or completion of the Engineer's Services or the Engineer otherwise becomes aware of the need for or desirability of additional services, a request for additional services may be submitted to the Owner in writing, in a format acceptable to Owner, and must specify the reasons for such change, including relevant circumstances and impacts on the Schedule. Engineer shall submit a pricing proposal concurrently with the request for additional services. Engineer may request additional compensation and/or time but not for instances that occurred more than sixty (60) calendar days prior to the request for additional services. Engineer's failure to initiate a request for additional services within such period shall be deemed a waiver of the right to adjustment of the compensation or time for completion for the alleged change. Any request for additional services that is approved by Owner will be incorporated in an Amendment. If the request for additional services is denied but the Engineer believes that it does have merit, the Engineer may submit a claim in accordance with the procedures set forth herein.

ARTICLE 5 OWNER'S AUTHORITY AND RESPONSIBILITIES

5.1 Designated Representative.

The Owner's Representative for this Project, who shall have the power to act on behalf of the Owner for all purposes under this Agreement except with respect to authorization of Additional Services, is designated in **Exhibit B**.

5.2 Project Requirements.

Prior to commencement of Engineer's design services, Owner shall provide an affirmative statement setting forth the design objectives, constraints and criteria for the Project, including space requirements and relationships, flexibility and expandability, special equipment and systems, and site requirements.

Prior to commencement of Engineer's design services, Owner shall set forth and approve a specific Project budget. The budget for the Project shall not be significantly increased or decreased, nor shall contingencies be included therein without Engineer's agreement to a corresponding change in the scope and quality.

5.3 Site Information.

Owner shall furnish copies of all available surveys, utility plans, street and roadway plans, geotechnical surveys, or other documents that describe Owner's utility system. The survey and utility system information may include, as applicable, grades and lines of streets, alleys, pavements; adjacent drainage; rights-of-way, restrictions, easements, encroachments, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All survey information shall be referenced to a Project benchmark.

Owner shall provide the results of all available tests, inspections, and reports regarding the Project in its possession and shall provide Engineer with written notice of any fault or defect in the Project (including errors, omissions or inconsistencies in the Instruments of Service) of which Owner becomes aware.

ARTICLE 6 CONSTRUCTION COST

6.1 Definition.

6.1.1 The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all construction related elements of the Project designed or specified by the Engineer.

6.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment and systems designed, specified, selected or specially provided for by the Engineer, including costs for management and/or supervision of construction or installation provided by the general contractor, plus a reasonable allowance for general conditions and requirements, overhead, profit, bonds, and insurance. In addition, a reasonable allowance for construction contingencies and escalations shall be included for market conditions at the time of bidding and for potential changes in the Work.

6.1.3 Construction Cost does not include the compensation of the Engineer and the Engineer's Consultants, the costs for land, rights-of-way, financing, Owner related project management and/or construction management, and other soft costs that are generally the responsibility of the Owner as provided in Article 5.

ARTICLE 7 USE OF ENGINEER'S INSTRUMENTS OF SERVICE

7.1 Project Documents.

The Drawings, Specifications, sketches, calculations, Engineer's estimates and other documents prepared pursuant to this Agreement, in a reproducible computer media format, including AutoCAD, ("Project Documents") are Instruments of Service. Although the official copyright in all Project Documents shall remain with Engineer and applicable Consultants, the Project Documents shall be the sole property of Owner and shall be delivered to Owner whenever requested. Engineer shall keep such documents and materials on file and available for audit by the Owner for at least three (3) years

after the termination of this Agreement, whichever is later. Engineer may make duplicate copies of such materials and documents for its files or for such other purposes as may be authorized in writing by the Owner.

7.2 License.

This Agreement creates a non-exclusive and perpetual license for Owner to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Engineer shall require any and all subcontractors and Consultants to agree in writing that Owner is granted a non-exclusive and perpetual license for the work product of such subcontractors or Consultants performed pursuant to this Agreement. On execution of this Agreement, the Engineer grants to the Owner a non-exclusive license to reproduce the Engineer's instruments of service solely for purposes of construction, using and maintaining the Project provided that Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Engineer and Engineer's Consultants shall be deemed the Authors and Owners of the respective instruments of service and shall retain all common law, statutory and other reserved rights, including copyrights.

7.3 Re-Use of Project Documents.

7.3.1 In the event this Agreement is terminated prior to completion of the Project, provided Owner has complied with all obligations, including prompt payment of all sums when due, under this Agreement, the foregoing license shall continue in force and effect, permitting Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections, or additions to the Instruments of Service solely for the purposes of constructing, repairing, renovating, modernizing, replacing, reconstructing, or expanding the Project.

7.3.2 In authorizing such similarly credentialed professionals to utilize the Instruments of Service, Owner shall direct each such professional in writing that such professional shall not rely on the information contained in the Instruments of Service, but shall make independent investigations to ascertain the validity of such information.

7.3.3 The Owner shall protect, defend, indemnify and hold Engineer and Engineer's Consultants harmless from claims and liability for injury, damage or death resulting from re-use of the Instruments of Services.

ARTICLE 8 INDEMNITY

8.1 Engineer's Obligation.

To the fullest extent provided by law, Consultant shall defend, indemnify and hold harmless the Client and its officers, agents, and employees, against all claims for personal injury, property damage, or wrongful death that pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, its officers, agents, and employees.

The Consultant's obligations under this Section of the Agreement shall survive the termination of the Agreement and the completion of the performance of the work required by the Agreement.

8.2 City's Obligation.

The City agrees to defend, indemnify, and hold harmless, to the maximum extent permitted by law, the Engineer, its Consultants and all of their respective shareholders, officers, employees, agents, representatives and their successors and assigns ("Indemnitees"), from any and all liability, loss, suit, claim, damage, cost, judgment and expense (including attorneys fees and costs of litigation) arising from any negligent conduct of the City, its agents, employees, or representatives in connection with the performance of this Agreement. Notwithstanding the foregoing, City's obligation to indemnify the Indemnitees for any judgment, decree or arbitration award shall extend only to the percentage of negligence attributed to City, its agents, employees, or representatives with regard to such liability, suit, claim, damage, cost, judgment, loss and expense. Further, the City's obligation to defend the Indemnitees applies only to the extent the claim or suit against the Indemnitees arises with respect to allegations of negligent conduct of the City, its agents, employees, or representatives.

ARTICLE 9 INSURANCE

9.1 General.

9.1.1 Prior to commencing any services hereunder, Engineer and its Consultants shall obtain and maintain policies of insurance of the types and in the amounts set forth below, for the duration of this Agreement or such further period as specified herein, providing coverage for claims arising from or related to Services to be performed under this Agreement.

9.1.2 The policies shall state that they afford primary coverage. Engineer shall: (1) include all Consultants as insureds under its own policies; or (2) shall furnish separate insurance for each Consultant; or (3) provide evidence that the Consultant has, in force, all insurance required by this section.

9.1.3 Insurance shall be placed with insurers authorized to transact business (i.e. admitted) in the State of California so as to provide access to the California Guaranty Association and other state regulation or have a "Best's Guide" rating of no less than B+ and having been approved as to financial condition in writing by Owner prior to execution of this Agreement.

9.1.4 Prior to commencement of performance, Engineer shall furnish Owner with a Certificate of Insurance for each policy. Each certificate is to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificate(s) must be in a form approved by Owner. Owner may require complete, certified copies of any or all policies at any time. All liability insurance deductibles must be identified in the Certificates of Insurance provided to the Owner. The deductibles for all insurance policies required herein shall be considered a form of self-insurance.

9.1.5 Each insurance policy included in this clause shall be endorsed to state that coverage shall not be cancelled except after thirty (30) calendar days prior written notice to Owner.

9.1.6 Failure to maintain required insurance at all times shall constitute a default and material breach of this Agreement. In such event, Engineer shall immediately notify Owner and cease all performance under this Agreement until further directed by the Owner. In the absence of satisfactory insurance coverage, Owner may, at its option: (a) procure insurance with collection rights for premiums, attorney's fees and costs against Engineer by way of set-off or recoupment from sums due Engineer; (b) immediately terminate this Agreement; or (c) self insure the risk, with all damages and costs incurred, by judgment, settlement or otherwise, including attorney's fees and costs, being collectible from Engineer, by way of set-off or recoupment from any sums due Engineer.

9.2 Professional Liability.

Engineer shall obtain and maintain, for the duration of this Agreement and for a period of three (3) years following completion of construction of the Project, to the extent commercially available professional liability (errors and omissions) standard practice policy such coverage shall be in the minimum amount of **\$1,000,000** per claim and in the annual aggregate of **\$2,000,000**.

9.3 Automobile.

Automobile Liability with minimum limits of at least **\$100,000/\$300,000/\$50,000** for hired and non-owned liability coverage if written on a Commercial automobile liability form.

9.4 General Liability.

Comprehensive General Liability with minimum limits of at least **\$2,000,000** combined single limits with coverage on an occurrence basis to apply per project. Premises/Operations and Personal Injury coverage is required. The City, the City Council, their officers, employees and agents must be endorsed on the policy as additional insureds as respects liability arising out of the Engineer's performance of this Agreement. The endorsement shall require the insurance company to provide the City a minimum of thirty (30) calendar days notice of cancellation of the policy and ten (10) calendar days notice for non-payment of premium. All endorsements to the insurance policy must be approved as to form by the City Attorney's Office.

9.4.1 If Engineer employs consultants as part of the services rendered, Contractor's Protective Coverage is required.

9.5 Worker's Compensation.

Engineer shall comply with the applicable sections of the California Labor Code concerning workers' compensation for injuries on the job. A Waiver of Subrogation is also required. Compliance is accomplished in one of the following manners:

9.5.1 Provide copy of permissive self-insurance certificate approved by the State of California; or

9.5.2 Secure and maintain in force a policy of workers' compensation insurance with statutory limits and Employer's Liability Insurance with a minimal limit of **\$1,000,000** per accident; or

9.5.3 Provide a "waiver" form certifying that no employees subject to the Labor Code's Workers' Compensation provision will be used in performance of this Agreement.

9.6 Engineer's Consultants' Insurance.

Engineer shall cause its Consultants to obtain and maintain for the duration of this Agreement or such further period as specified herein, the general liability policy described in this Article. Engineer warrants that it shall require all its Consultants to name both the Engineer and the Owner as additional insureds on endorsements to the Consultants' insurance policies.

ARTICLE 10 PAYMENTS TO THE ENGINEER

10.1 Payments on Account of Basic Services.

The Engineer agrees to enter into a Firm-Fixed Price contract with the Owner for services rendered under this contract in the amount of \$_____.

10.1.1 Owner shall make progress payments on a monthly basis for Services properly completed in accordance with the Schedule for Basic Compensation provided in **Exhibit C**. In order to receive payment, Engineer shall present to Owner an itemized statement which indicates Services performed by Engineer and its Consultants, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial Commencement Date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period and other information reasonably requested by Owner. If the Basis of Payment is a firm fixed fee, progress payments shall be made based on percent of work complete or completion of clearly defined milestones. No deductions shall be made from Engineer's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the work other than those for which Engineer has been adjudged in a court of law to be liable. Payment shall be made for Services performed provided, however, that the amount paid to Engineer shall never exceed the amounts authorized by the Schedule for Basic Compensation or any not-to-exceed amount for additional services as provided in **Exhibit C**. Owner shall, within thirty (30) calendar days of receiving Engineer's itemized statement, pay all approved charges therein.

10.1.2 Reimbursable Expenses. Engineer shall, at its sole cost and expense, furnish all necessary and incidental labor, materials, supplies, facilities, equipment, and travel which may be required for furnishing Services pursuant to this Agreement within

the Firm-Fixed Fee Amount identified in Article 11. Engineer shall be reimbursed for the expenses identified as Reimbursable in **Exhibit C** which are reasonably and necessarily incurred by Engineer in the interest of the Project but in no event shall such Reimbursable Expenses exceed \$_____ without prior written approval by Owner in accordance with Article 4 herein. Engineer shall obtain Owner's prior written approval for reimbursement of: 1) expedited delivery charges not due to delay by Engineer; 2) extraordinary or out-of-town travel expenses; 3) document reproduction costs in excess of \$250; and 4) any individual cost, fee or expense in excess of \$500. Mark-up costs for Reimbursable Expenses are not permitted.

10.2 Payments on Account of Additional Services.

10.2.1 Procedures for payments for Additional Services may be made based on percentage completion of a Firm-Fixed Fee Amount or according to hourly rates provided that, in any event, Additional Services shall be separately itemized on Engineer's statement. Engineer expressly waives any right to payment for any Additional Services rendered if Engineer does not give written notice of its claim that the services are Additional Services prior to rendering such services and if such services are not billed as Additional Services within ninety (90) calendar days following their initiation. The method for computing the amount of Additional Services is described in **Exhibit C**.

10.2.2 Hourly Rates for compensation in **Exhibit C** include the direct salaries and wages of the Engineer's personnel and its Consultants engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, including, but not limited to, employment taxes and other statutory employee benefits, insuring sick leave, holidays, vacations and employee retirement plans, allocable to this Project as well as overhead and profit. Engineer's hourly rates shall include all professional time and all clerical, administrative, overhead, insurance, reproduction, telephone, and transportation expenses. Engineer's hourly rates, including the Engineer's Consultant rates accepted by the City, shall remain constant throughout the duration of the Project, including in-house staff that may be promoted.

10.3 Payments Withheld.

To the extent the Owner has any rights to withhold disputed amounts on payment pursuant to Civil Code § 3320, the Owner agrees to abide by all provisions of Civil Code §3320, and withhold only payments authorized therein. The Owner further agrees to be governed by all provisions of §3320.

10.4 Cost Principles

Engineer agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items. Engineer also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to Engineer that are determined by subsequent audit to be unallowable under 49 CFR Part 18 and 48 CFR,

Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Engineer to Owner.

10.5 STATE AND FEDERAL PREVAILING WAGE RATES

Engineer shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code Section 1771, and all Federal, State, and local laws and ordinances applicable to the work.

ARTICLE 11 OTHER CONDITIONS OR SERVICES

11.1 Independent Contractor.

11.1.1 Owner retains Engineer on an independent contractor basis and not as an agent or employee of Owner. Engineer has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons employed by Engineer in the performance of the Services hereunder. Engineer shall be solely responsible for, and shall indemnify, defend and save Owner harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, and regulations.

11.1.2 Engineer acknowledges that any Consultants, subcontractors, agents or employees employed by Engineer shall not, under any circumstances, be considered employees of the Owner, and that they shall not be entitled to any of the benefits or rights afforded employees of Owner, including, but not limited to, sick leave, vacation leave, holiday pay, benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

11.2 Assignment.

The Owner and Engineer, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The Engineer shall not assign this Agreement without the Owner's written consent. The Owner may freely assign its rights hereunder, without limitation, to a separate entity and Engineer agrees, upon such entity's request, to continue and complete performance of the services upon payment of any undisputed outstanding amounts due Engineer for services performed provided, however, that Owner shall not be relieved of its obligations under this Agreement and that the assignee shall agree in writing to perform all of the obligations of Owner hereunder. Any entity that shall succeed to the rights of Owner shall be entitled to enforce the rights of Owner hereunder. If requested by such entity, Engineer will execute a separate letter or other agreement with such entity, further evidencing Engineer's commitment to continue performance of this Agreement.

11.3 Correction of Work.

Engineer shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, goods, and other services required by this Agreement, without additional cost to the Owner. The performance or acceptance of services furnished by Engineer shall not relieve the Engineer from the obligation to correct subsequently discovered defective, inaccurate or incomplete tasks.

11.4 No Waiver or Estoppel.

The Owner's waiver of any term, condition, breach or default of this Agreement shall not be considered to be a waiver of any other term, condition, default or breach. Owner shall not be precluded or estopped by any return, certificate, or approval made under any provisions of this Agreement before or after final completion of the Project and final payment to Engineer, from showing that any such return, certificate or approval is untrue, incorrect or improperly made or from demanding recovery from Engineer such damages as Owner may sustain as a result of Engineer's fault.

11.5 Interpretation.

11.5.1 This Agreement shall be governed by the laws of the State of California.

11.5.2 If any provision in this Agreement is held by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining provisions shall nevertheless continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Agreement.

11.5.3 Each and every provision and clause required by law to be inserted in the Contract Documents shall be deemed to be inserted herein.

11.6 Duplicate Originals.

There shall be two (2) fully signed sets of this Agreement, each of which shall be deemed an original.

11.7 Maintenance and Inspection of Records.

Upon reasonable advanced notice, the Owner, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of the records to the extent the Owner deems necessary to ensure it is paying only the amounts to which Engineer is properly entitled under the Agreement or for other purposes relating to the Agreement.

11.7.1 The Engineer shall maintain and preserve all such records for a period of at least three (3) years after termination of the Agreement.

11.7.2 In the event the Owner desires to perform any audit of the Engineer's ledgers for this Project at Owner's expense, the Engineer will cooperate with such audit by making all its records available.

11.8 Conflict of Interest.

Engineer hereby represents, warrants, and certifies that no member, officer or employee of the Engineer is a director, officer or employee of Owner, or a member of any of its boards, commissions or committees except to the extent permitted by law.

11.9 Notices.

11.9.1 Any notice or demand to be given by one party to the other shall be given in writing and by personal delivery or prepaid first-class, registered or certified mail, addressed as follows:

If to the Owner:

**City Clerk
City of Burbank
275 E. Olive Avenue
P.O. Box 6459
Burbank, CA 91510-6459**

**cc: Ross Young
Real Estate and Project Manager
Joy Forbes
Community Development Director**

If to the Engineer:

Notice simply to the City or any other City department is not adequate notice.

11.9.2 Any such notice shall be deemed to have been given upon delivery, if personally delivered, or, if mailed, via Certified Mail, upon receipt or upon expiration of five (5) calendar days from the date of posting, whichever is earlier. Either party may change the address at which it desires to receive notice upon giving written notice of such request to the other party.

11.10 Publicity and Confidentiality of Material.

11.10.1 The Engineer and its agents and employees shall not engage in any communication or correspondence with persons not directly involved in the construction of the Project, concerning any aspect of the construction of the Project, without the express written consent of Owner. All communications to the media, or in response to inquiries made by private citizens, shall be issued solely through the Owner. Upon completion of the Project, the Owner will not unreasonably withhold its approval of Engineer communicating with media and others relative to this Project.

11.10.2 Engineer may, during the course of providing its Services hereunder or in relation to this Agreement, have access to and acquire knowledge regarding materials, data, systems and other information of or with respect to Owner which may not be accessible or known to the general public ("Confidential Information"). Confidential Information that is specific as to techniques, equipment, processes, products, concepts or designs, etc. shall not be deemed to be within the knowledge of the general public merely because it is embraced by general disclosures in the public domain. Any knowledge acquired by Engineer from such Confidential Information or otherwise

through its engagement hereunder shall not be used, published or divulged by Engineer, to any other person, firm or corporation, or used in any advertising or promotion regarding Engineer or its services, or in any other manner or connection whatsoever without first having obtained the written permission of Owner, which permission Owner may withhold in its sole discretion. Engineer specifically agrees that the foregoing confidentiality obligation applies to, but is not limited to, any information disclosed to Engineer in any document provided to Engineer by Owner which may not be accessible or known to the general public, including but not limited to, a Request for Proposal, Request for Estimate, Request for Quotation and Invitation to Bid. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

Engineer's duty to refrain from disclosing information designated as "Confidential Information" shall not apply if withholding such information would violate the law, create the risk of significant harm to the public or prevent Engineer from establishing a claim or defense in an adjudicatory proceeding. In the event Engineer determines that disclosure is necessary for the foregoing reasons, they shall immediately notify Owner of such determination in order that Owner may, at its option and its sole expense, seek in a timely fashion a protective order, or such other remedy, as it may determine appropriate. In the event that disclosure of any Confidential Information is ordered by a court or administrative agency, Engineer shall give Owner not less than ten (10) business days notice, in writing, of such disclosure.

ARTICLE 12 TERMINATION OR SUSPENSION

12.1 Termination by Owner for Cause.

Owner shall have the right to terminate Engineer under this Agreement upon written notice, effective immediately unless otherwise provided in said notice, if Engineer shall fail to commence the Services in accordance with the provisions of this Agreement or fail to diligently perform the Services, fail to use acceptable personnel or Consultants, fail to perform any of its obligations under this Agreement or any other Contract Document, or fail to make prompt payments to its Consultants. Any such act by Owner shall not be deemed a waiver of any other right or remedy of Owner. If Owner terminates Engineer for cause, Owner agrees to immediately proceed with a Meeting of Principals to determine a proper accounting for all services rendered by Engineer. If the Meeting of Principals fails to result in an appropriate Agreement as to solution of costs for termination, Owner and Engineer agree to proceed with the mediation, arbitration, or legal proceedings as set forth in Article 14.

12.2 Termination by Owner for Convenience.

12.2.1 Owner shall have the right to terminate Engineer under this Agreement for its convenience without regard to fault or breach upon written notice, effective immediately unless otherwise provided in said notice. In the event of such termination, Owner shall pay as the sole amount due to Engineer in connection with this Project sums due hereunder for Services performed to date plus reasonable demobilization costs incurred due to such termination. Such sums will be due and payable on the same conditions as set forth for final payment to the extent applicable. Upon receipt of such payment, the parties hereto shall have no further obligations to each other except

for Engineer's obligation to indemnify Owner and maintain any insurance as provided for in this Agreement. It is understood and agreed that no fee, anticipated profit or other compensation or payment of any kind or character shall be due or payable for unperformed Services regardless of the basis of termination and the inclusion of this provision within this subsection shall in no way limit its application to termination under this subsection. Engineer agrees that each agreement with any Consultant entered into by it will reserve for Engineer the same right of termination provided by this subsection.

12.2.2 Upon a determination that any termination of Engineer or its successor in interest was wrongful, such termination will be deemed converted to a termination for convenience pursuant to the proceeding provisions hereof and Engineer's remedy for wrongful termination in such event shall be limited to the recovery of the payments permitted for termination for convenience as set forth above.

12.2.3 The rights and remedies of Owner and Engineer in the event of termination herein set forth shall be non-exclusive, and shall be in addition to all the other remedies available at law or in equity.

12.3 Engineer's Duty Upon Termination.

If Owner terminates Engineer under this Agreement or if Engineer terminates a Consultant with Owner's approval, Engineer shall deliver all Deliverables, documents, records, reports, logs, diaries, estimates, contractor submittals and other items produced or purchased pursuant to this Agreement by Engineer and/or its Consultants, as applicable, to Owner in an organized, usable form with all items properly labeled to the degree of detail specified by Owner. No compensation shall be due Engineer until it complies with the requirements of this paragraph.

12.4 Partial Deletion or Suspension of Services.

12.4.1 Engineer agrees that the Owner may determine whether any or all of the Services described in this Agreement shall be deleted or its performance suspended without electing to terminate the Engineer's performance under the Agreement and without any penalty being incurred by Owner. Any such partial deletion or suspension of the Services shall in no way void or invalidate this Agreement nor shall it provide Engineer any basis for seeking payment from Owner for Services deleted or suspended except to the extent such Services have already been performed and are otherwise billable under this Agreement, and Owner shall have the right to later have any Services suspended or deleted from this Agreement performed by others without any penalty to Owner. In the event of any such partial or complete deletion or suspension, Owner shall furnish Engineer with prompt written notice thereof and Owner shall be entitled to have as its property all documents, records, logs, drawings, calculations, reports and other data prepared by or assets purchased by Engineer or Consultants, of any tier, and shall pay Engineer therefore. The Owner may require Engineer to perform Services later during the term of this Agreement which were earlier deleted or suspended. Engineer shall not resume any such Services until the Owner has issued a written notice to proceed or a change order. Engineer shall identify the sequence of its deliverables for the Owner's review and acceptance. In the event Owner directs Engineer to perform work out of sequence, additional Engineering and/or Engineering fees may be due the Engineer.

12.4.2 If the Project is suspended by Owner for more than thirty (30) consecutive calendar days, Engineer shall be compensated for services performed prior to notice of such suspension, as well as expenses incurred in the interruption and resumption of Engineer's services.

12.4.3 If the Engineer's services are suspended for more than one hundred and eighty (180) consecutive calendar days, Engineer shall be able to terminate this Agreement.

12.5 Manner of Payment Upon Termination, Partial Deletion or Suspension of Services.

Upon any deletion, suspension or termination by the Owner and upon receipt of a final certified invoice with one (1) original and two (2) copies, Owner shall pay Engineer the amount, excluding disputed amounts, as determined by the Owner, due for the Services performed prior to such deletion, suspension or termination, less amounts previously paid.

12.5.1 If Owner fails to make payments to Engineer in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Engineer's option, cause for suspension of performance of services.

ARTICLE 13 DISPUTE RESOLUTION

13.1 Notice of Dispute Regarding Engineer's Services.

If Engineer and Owner cannot agree as to the quality or acceptability of the Services, or whether Additional Services are required and/or the compensation payable to Engineer under this Agreement, Owner or Engineer may promptly give to the other a written notice thereof and, within sixty (60) calendar days after the event giving rise to the dispute, Engineer and Owner shall each prepare a report which supports their respective positions and file the same with the other party. Engineer's report shall include any possible claims against Owner, including the amount of additional compensation requested. Thereafter, the Owner shall, with reasonable diligence, determine the quality or acceptability of Services, or whether a change in the Services is required, and/or the compensation payable to Engineer. Submittal of the matter to Owner, as required by this Section, is a prerequisite to the right of Engineer to contest any such matter in judicial or other proceedings and Engineer expressly waives any right to so contest any decision(s) of Owner unless it has first presented the matter to Owner and within the time limits as provided herein.

13.2 Resolution of Disputes.

Subject to the provisions of Article 10.1.1, to the extent there is any disagreement as to any services rendered by the Engineer pursuant to this Contract, the Owner and Engineer agree to immediately convene a Meeting of Principals. The Meeting of Principals will require the attendance of _____ on behalf of Engineer, and the attendance of the Director of Community Development and/or their designee on behalf of the Owner. The Principals will attempt to resolve any question arising out of, or related to disagreement on an informal basis. If the Meeting of Principals does not resolve the issue,

any claim, dispute or other matter in question arising out of, or related to this Agreement shall be subject to mediation as a condition precedent to the filing of any arbitration or legal or equitable proceeding by either party. Arbitration must be agreed upon by both parties before arbitration proceeds. In the absence of any agreement to submit to binding arbitration, all parties reserve their common law and statutory rights to proceed with litigation. All efforts will be made by both the Engineer and the Owner to avoid any formal mediation, arbitration, or other legal proceeding.

The Owner and Engineer shall endeavor to resolve claims, disputes and other matters in question between them first by Meeting of Principals. Next, by mediation, and only thereafter, by arbitration, (if agreed upon), or by the filing of a subsequent lawsuit. If mediation is required, the parties agree to mediate in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, or, upon any other rules the parties agree to. If no agreement to mediation is reached, request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a Demand for Arbitration (if agreed upon by both parties) but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless for a longer period of agreement of the parties or Court Order.

The Parties shall pay the Mediator's fee and any filing fees equally. Mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as Settlement Agreements in any Court having jurisdiction thereof.

13.3 Failure or Refusal to Mediate Disputes.

If, for any dispute or claim to which this Section applies, any party commences an action without first attempting to resolve the matter through Informal Dispute Resolution, or refuses to participate in Informal Dispute Resolution after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action.

ARTICLE 14 ENUMERATION OF CONTRACT DOCUMENTS

14.1 Contract Documents.

14.1.1 This Agreement represents the entire and integrated agreement between the Owner and the Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written amendment signed by both Owner and Engineer.

14.1.2 The "Contract Documents," except for amendments issued after execution of this Agreement, consist of the following documents, all of which are either attached hereto as Exhibits or are incorporated into this Agreement by this reference, with the same force and effect as if same were set forth at length herein;

This Agreement, including all exhibits and attachments:

- Exhibit A** – Scope of Services;
- Exhibit B** – Designated Representatives, Key Personnel, and Consultants;
- Exhibit C** – Basic Compensation, Hourly Rates and Reimbursable Expenses;
- Exhibit D** – Caltrans LAPM Exhibit 10-C: Consultant Contract Reviewers Checklist;
- Exhibit E** – Caltrans LAPM Exhibit 10-F: Certification of Consultant, Commissions & Fees;
- Exhibit F** – Caltrans LAPM Exhibit 10-H: Cost Proposal;
- Exhibit G** – Caltrans LAPM Exhibit 10-J: Standard Contract Provisions for Subconsultant / DBE Participation;
- Exhibit H** – Caltrans LAPM Exhibit 10-K: Consultant Certification of Costs and Financial Management System;
- Exhibit I** – Caltrans LAPM Exhibit 10-L: Local Agency Certification of Cost Analysis;
- Exhibit J** – Caltrans LAPM Exhibit 10-O1: Consultant Proposal DBE Commitment;
- Exhibit K** – Caltrans LAPM Exhibit 10-O2: Consultant Contract DBE Information;
- Exhibit L** – Caltrans LAPM Exhibit 10-P: Nonlobbying Certification for Federal-Aid Contracts;
- Exhibit M** – Caltrans LAPM Exhibit 10-Q: Disclosure of Lobbying Activities;
- Exhibit N** – Caltrans LAPM Exhibit 10-V: Non-Discrimination Clause

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

The Engineer hereby represents and warrants to the Owner that the Engineer has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, and that signature and execution of this Agreement has been duly authorized.

"ENGINEER"

Signature

Name (please print)

Title

ATTEST:
Clerk

Zizzette Mullins
City Clerk

"OWNER"

Signature

Joy Forbes

Name (please print)

Community Development Director

Title

Approved as to Form Office of the City of
Burbank City Attorney's Office

By: _____
Signature

Name

Title

EXHIBIT A
SCOPE OF WORK

[Pending]

**EXHIBIT B – DESIGNATED REPRESENTATIVES,
KEY PERSONNEL AND CONSULTANTS**

I. BY ENGINEER

- A. Engineer's Project Representative is:
- B. Engineer's Key Personnel are:

<u>Name</u>	<u>Title</u>	<u>Project Role</u>
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II. BY OWNER

- A. Owner's Designated Official is: Joy Forbes, Community Development Director
- B. Owner's Project Manager is: Ross Young, Real Estate and Project Manager
- C. Owner's Contract Administrator is: Ross Young, Real Estate and Project Manager

**EXHIBIT C – BASIC COMPENSATION, HOURLY RATES
AND REIMBURSABLE EXPENSES
FOR ENGINEER AND ITS CONSULTANTS**

1. Basic Compensation.

For Basic Services, as described herein and in **Exhibit A**, Basic Compensation shall be computed on the basis of completed tasks for the **Firm Fixed Fee** of \$_____ and not to exceed the amounts set forth in the attached Hours and Fee Schedule for Basic Compensation.

2. Compensation for Additional Services.

For Additional Services of the Engineer and its Consultants, compensation shall be computed on the basis of a Firm-Fixed Fee amount or on hourly rates and Reimbursable Expenses enumerated in this exhibit, subject to mutual agreement on a not-to-exceed amount for the Additional Services.

3. Progress Payments.

Progress payments shall be made monthly based upon the actual cost incurred to date for Services accepted by Owner, less the sum of previous payments paid. Engineer shall submit detailed statements to Owner on the first day of each month and Owner shall pay each approved invoice within thirty (30) calendar days after receipt of the Engineer's itemized statement. Statements shall refer to this Agreement by its Purchase Order indicated at the top of the first page hereof, shall display the original Cost of Services and shall include complete documentation of all charges. Authorized Reimbursable Expenses shall be indicated separately and shall be invoiced at their actual cost with no mark-up for Engineer's services, processing and checking all such reimbursable expenses, together with original receipts or other documentation to substantiate expenditures. Authorized Charges for Additional Services, if any, shall be indicated separately from charges for Basic Services. All statements shall be addressed to:

**City of Burbank
Attention: Ross Young
Real Estate and Project Manager
275 E Olive Avenue
P.O. Box 6459
Burbank, CA 91510-6459**

4. Final Payment.

Final Payment to the Engineer shall be made within sixty (60) calendar days after Engineer's written demand provided Engineer has completed the Services described by the Agreement, and has delivered to Owner the updated Engineering Documents, a Conditional Waiver and Release Upon Final Payment, a Declaration to Procure Payment and Release of Contract Rights, and any other Certificates and documentation reasonably required by Owner.

5. Hourly Rates.

Engineer's Hourly rates are inclusive of all profit, overhead, taxes, vacation, benefits and all other costs. A Cost Proposal, listing Hourly Rates shall be used in the event the Engineer's Scope of Services is modified. These Hourly Rates shall remain in effect throughout the Project's duration.

Engineer shall **provide a Cost Proposal as an attachment herein to the Exhibit on a form provided by the Owner (or in a form acceptable to Owner)**, which contains hourly rates of all its Consultants to be employed on this Project

The hourly rates of all its Consultants to be employed on this Project shall be reviewed and accepted prior to the City's execution of this Agreement. The City recognizes receipt of Consultant's Standard Hourly Billing Rates for the Period January 2013 through December 2013 as part of Consultant's Proposal for Plans, Specifications, and Estimates. Notwithstanding this information, the City may, at its option, negotiate subsequent construction related services with Consultant either on a Time and Materials Basis or Firm-Fixed Fee and that the hourly rate information as provided herein may be used as a guide to such potential additional services.

6. Reimbursable Expenses.

In no event shall such Reimbursable Expenses exceed _____ dollars (\$500) without Owner's prior written approval in accordance with Article 4 "Additional Services" herein. Engineer shall not be entitled to reimbursable expenses for telephone, facsimile, internet and data processing costs, and mileage to and from Owner offices and construction site, and entertainment. Engineer shall obtain Owner's **prior** written approval for reimbursement of:

- 1) expedited delivery charges not due to delay by Engineer;
- 2) extraordinary or out-of-town travel expenses;
- 3) document reproduction costs in excess of \$250; and
- 4) any individual cost, fee or expense in excess of \$500.